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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 December 13, 2023

16 3:00 PM

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

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1 HEARING re Scheduling Discovery Conference Held Using Zoom  
2 for Government. (related document(s) Doc# 4086, 4073, 4079,  
3 4077).

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: All right, good afternoon. The Court  
3 has scheduled this discovery conference at the request of  
4 Mr. Finestone. I'll let him begin and then I'll hear from  
5 the Debtor and the Committee's counsel next.

6 MR. KWASTENIET: Good afternoon, Your Honor. It's  
7 Ross Kwasteniet and from Kirkland. If I may just start with  
8 a brief update to the Court?

9 THE COURT: Sure. Go ahead, Mr. Kwasteniet.

10 MR. KWASTENIET: Great. So Your Honor, I have  
11 good news, which is that the Debtors and the Committee and  
12 the BRIC have been engaged in discussions and we've reached  
13 a resolution with the BRIC that obviates the need for  
14 today's discovery conference.

15 THE COURT: That's the best update I've heard. Go  
16 ahead. In a while.

17 MR. KWASTENIET: I thought -- I told Mr. Koenig, I  
18 said, no, there's good news, so I'm going to be the one --

19 THE COURT: So that's why you want to be the one  
20 to do it.

21 MR. KWASTENIET: Yeah, you got it. When Mr.  
22 Koenig had to tell you that we got bad news from the SEC, I  
23 let him deliver it, but I'm stealing his thunder. So, Your  
24 Honor, in a high level, the company, the UCC and the BRIC  
25 have reached agreement on the terms for the BRIC to handle

1 the pursuit of and monetization of certain illiquid assets  
2 and litigation claims. We've agreed to an immediate  
3 cessation of discovery and we are going to be working to  
4 document this agreement and expect to file a supplement to  
5 our motion describing these terms by the end of the week.

6 Your Honor, I'll note, we have many creditors on  
7 the line. We continue to be very focused on emergence from  
8 bankruptcy as soon as possible. We are aware that Bitcoin  
9 is now trading over, I think it was over 41,000 this  
10 morning, which is, you know, roughly double where it was as  
11 of the petition date. And so we placed a huge premium on  
12 concluding these cases and getting coins back to people as  
13 soon as possible and we look forward to presenting our  
14 proposed winddown procedures to Your Honor next week and at  
15 least as far as BRIC is concerned, again, pleased to report  
16 that we've reached a resolution and the terms will be  
17 forthcoming as soon as we can get them down on paper.

18 THE COURT: Okay. Bear with me a second. So what  
19 about the Galaxy issues?

20 MR. KWASTENIET: I suppose they can speak for  
21 themselves. They filed a pleading today saying that they  
22 didn't have discovery issues, that they may object to the  
23 motion, but their counsel is on the line, Your Honor, so  
24 they can speak for themselves. But obviously, from our  
25 standpoint, if, you know, if somebody objects to our motion

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1       we'll respond to it and we'll be prepared to carry our  
2       burden.

3                   THE COURT: Just give me a second.

4                   MR. HAIMS: Your Honor, this is Joel --

5                   THE COURT: Hold on, hold on. Everybody stop. I,  
6       I guess I'll hear from Galaxy's counsel in a minute. I  
7       asked the question because Mr. Colodny's letter suggested  
8       that Galaxy wanted to depose everybody in the world, but --

9                   MR. COLODNY: That's correct, Your Honor, but  
10      today, Galaxy filed a letter saying it was not, it did not  
11      intend to seek any discovery.

12                  THE COURT: Okay. I'm a step behind. I didn't  
13      see that.

14                  MR. KWASTENIET: It just hit the docket this  
15      morning, Your Honor.

16                  MR. HAIMS: This is Joel Haims from McDermott,  
17      Will & Emery on behalf of Galaxy. That's correct, Your  
18      Honor. We filed a letter saying -- we still plan to file an  
19      objection, but we don't need discovery (indiscernible).

20                  THE COURT: All right, thank you. So, what do  
21      people -- well, let me ask the Debtor and the Committee.  
22      What do you expect will be -- will happen at the hearing on  
23      the 21st?

24                  MR. KWASTENIET: Yes, Your Honor. Again, Ross  
25      Kwasteniet from Kirkland, for the record. On the 21st, Your

1 Honor, we expect to present our proposed winddown  
2 procedures. We built into the plan on the concept that if  
3 there was an adverse regulatory decision that caused us to  
4 have to deviate from the Fahrenheit transaction that we  
5 would describe that in what we called winddown procedures  
6 and we would file that with the Court and parties had --  
7 would have at least ten days, you know, ten days' notice and  
8 the winddown procedures could be approved by the Court and  
9 then we could implement the plan.

10 So, from the Debtors' perspective, that's what we  
11 would like to present to Your Honor. And obviously, we will  
12 address any objections that are filed.

13 THE COURT: The objection deadline is tomorrow at  
14 four o'clock; is that right?

15 MR. KWASTENIET: I believe that's correct, Your  
16 Honor, yes. And then subject to, you know, once the  
17 winddown procedures are approved, the Debtors have been in  
18 the background making all necessary plans to be able to  
19 emerge from Chapter 11, to make the cryptocurrency  
20 distributions, et cetera, you know. As soon as the winddown  
21 procedures are approved, we would plan to go forward and  
22 implement and go effective on the plan.

23 THE COURT: So, am I correct, the motion that's on  
24 for the 21st, it's styled notice of hearing on joint motion  
25 of the Debtors and the Committee for entry of an order

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1 approving the implementation of the MiningCo transaction and  
2 granting related relief?

3 MR. KWASTENIET: That's correct, Your Honor.

4 THE COURT: Okay. Ms. Cornell, I see you on the  
5 screen. Is the U.S. Trustee going to be filing an  
6 objection?

7 MS. CORNELL: Yes, Your Honor.

8 THE COURT: Could you just give me a two-sentence  
9 preview?

10 MS. CORNELL: I'm not sure if two sentences is  
11 going to suffice.

12 THE COURT: I won't hold you to the two sentences.

13 MS. CORNELL: Our issues this point, and we have  
14 previewed them for both the Committee and the Debtors, so  
15 this is not a surprise to them, either.

16 THE COURT: I'm not surprised either. That's why  
17 I asked you the question.

18 MS. CORNELL: Many of our issues echo Your Honor's  
19 comments at the November 30th hearing.

20 THE COURT: My comments were only a question.  
21 They weren't -- I wasn't suggesting that --

22 MS. CORNELL: Sure.

23 THE COURT: -- it can or can't be approved. I  
24 raised a question. Go ahead.

25 MS. CORNELL: Sure. It is our current viewing of

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1 the motion that it seeks to implement a transaction that was  
2 not contemplated by the plan, and therefore a new disclosure  
3 statement and solicitation would be required under the code.

4 THE COURT: I will look forward to seeing it.

5 MS. CORNELL: Thank you, Your Honor.

6 THE COURT: Okay. I don't mean that exactly  
7 seriously, but I --

8 MS. CORNELL: I understand.

9 THE COURT: Obviously, I will pay attention to it.  
10 Does anybody else want to be heard?

11 CLERK: Judge, there's two parties with their  
12 hands raised, Mr. Adler and Ms. Bonsall.

13 MR. ADLER: Good afternoon, Your Honor. David  
14 Adler on behalf of the Ad Hoc Group of Retail Borrowers.  
15 I'm joined today by my partner Lisa Bonsall, who will be  
16 handling aspects of this proceeding. I'm a little bit  
17 confused because we're preparing to object to the motion  
18 tomorrow, and like the U.S. Trustee, our position is that  
19 the plan that or the toggle that they wish to go to is not  
20 that which was described in the disclosure statement or the  
21 plan.

22 And I get the sense from the comments from Mr.  
23 Kwasteniet that we're going to file this objection and then  
24 the next day, there's going to be something new that comes  
25 out on the docket with new winddown procedures. So, I'd

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1 like to address the timing of the objections and the, you  
2 know, the proposal that will be coming, forthcoming relating  
3 to BRICs. That's number one.

4 Number two, just to advise Your Honor, we did  
5 serve discovery, very limited discovery, on the Debtors and  
6 the Committee relating to communications with the SEC. We  
7 had a meet and confer yesterday with the Debtors. We're  
8 still waiting to hear from the committee, so the issue --  
9 there may be additional issues that come up before Your  
10 Honor.

11 THE COURT: What's the relevance of their  
12 communications with the SEC?

13 MR. ADLER: I think that a record is being -- has  
14 been established in those communications regarding MineCo so  
15 that those submissions, I assume, have to do or have a lot  
16 to say about the mining company as well as the other, you  
17 know, issues that were raised. We don't know for certain,  
18 Your Honor, but we think (audio glitch) those  
19 communications.

20 THE COURT: Ms. Bonsall, I see your hand next.

21 MS. BONSALL: I think that Mr. Adler covered it,  
22 Your Honor. I guess the only thing I would add with respect  
23 to the relevance of the SEC communications is that it's all  
24 over their motion. If you --

25 THE COURT: Are you doubting that the SEC said

1       that they wouldn't permit the staking operation to be part  
2       of mining?

3                  MS. BONSALL: I don't know what --

4                  THE COURT: Are you doubting that?

5                  MS. BONSALL: -- they said, Your Honor.

6                  THE COURT: Are you really doubting that?

7                  MS. BONSALL: I don't doubt that. I do wonder  
8       what kind of communications there were with respect to  
9       MineCo, since a good portion of the motion promotes the idea  
10      that MineCo will also be a publicly listed company.

11                 THE COURT: Still is. Still the proposal. That  
12     hasn't changed. I think the issue was, as I understand it,  
13     MiningCo had audited financials and the staking operation  
14     didn't. And the issue of whether you could do a quick  
15     procedure with the SEC is, were there audited financials.  
16     That's been out there for a long time. I mean, there's  
17     nothing -- so are you doubting the SEC said no, your  
18     proposal for this public company is a no-go because you  
19     don't have audited financials for the staking operation?

20                 I mean, that was -- I knew that was the position  
21     at the time of the confirmation hearing. They hadn't taken  
22     a final position on it, but that issue, I think, was  
23     previewed.

24                 MS. BONSALL: Well, I didn't see it in the  
25     disclosure statement, Your Honor. So --

1           THE COURT: Did you attend the confirmation  
2 hearing?

3           MS. BONSALL: I read --

4           THE COURT: Did you attend the confirmation  
5 hearing?

6           MS. BONSALL: -- transcripts -- I did not. I did  
7 get the transcripts, Your Honor, and in all fairness, Judge,  
8 it's their motion and they are the ones who put at issue the  
9 --

10          THE COURT: Yeah, but --

11          MS. BONSALL: -- the SEC communication.

12          THE COURT: -- it may be their motion, but I'm not  
13 sure I'm getting -- you're going to get discovery. That's  
14 what I'm saying.

15          MS. BONSALL: Well, the Debtor agreed --

16          THE COURT: -- the hearing. The Debtor agreed  
17 what?

18          MS. BONSALL: The Debtor agreed to provide the SEC  
19 communications with the objection that he did not believe  
20 them to be relevant, but at the meet and confer yesterday,  
21 the Debtor did agree to provide those communications, Your  
22 Honor.

23          THE COURT: All right. So, it sounds like we  
24 don't have a dispute to deal with. Mister --

25          MS. BONSALL: And that's why I didn't put a letter

1 in, Your Honor.

2 THE COURT: That's fine.

3 MS. BONSALL: I did -- and I was hopeful that  
4 there would be nothing to say.

5 THE COURT: Thank you, Ms. Bonsall. I'll go in  
6 the order I see the hands raised. Mr. Dixon, briefly.

7 MR. DIXON: Hi, there. Simon Dixon, pro se  
8 creditor. I just wanted to bring attention to the value  
9 destruction that may occur from delaying this plan too far.  
10 As one of the top creditors, we've done the maths and once  
11 Bitcoin hits a price of 54,000 or above, the next in line  
12 under subordination, which I believe to be U.S. government  
13 agencies may end up with a significant portion of our  
14 recovery. And so by delaying this, I do believe that the  
15 value destruction could be significantly worse.

16 THE COURT: The only thing, Mr. Dixon, let me --  
17 that's not today's issue, but I think the Debtor and the  
18 Committee -- Debtors, plural, and Committee are keenly  
19 focused on that and they're trying to get the distribution  
20 to creditors as soon as they can. I commented at the last  
21 hearing, that's my goal, too, but the question is whether  
22 applicable bankruptcy law and procedure because of the  
23 changes they're proposing to make, would require a new  
24 disclosure statement and solicitation.

25 That's really a legal issue. I share with you a

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1 desire to get this wrapped up as soon as possible and  
2 distributions to creditors as soon as possible. I don't say  
3 it embarrassingly. I'm constrained by the law. I'll follow  
4 what the law is. We'll see what happens at the hearing on  
5 the 21st, but your point, I think, is essentially the  
6 position that the Committee and the Debtors take.

7 They're trying to get a plan effective as soon as  
8 possible in light of the position of the SEC that mining --  
9 no public MiningCo could include the staking operation.  
10 They've had to shift gears. Okay, so I have your point  
11 clearly. We'll take this up at the hearing on the 21st.

12 Mr. Colodny? Thank you, Mr. Dixon.

13 MR. COLODNY: Yes, Your Honor. I always like when  
14 you make my points before I make them, but we are focused on  
15 getting out of bankruptcy as soon as possible. I disagree  
16 with Mr. Dixon's characterizations of the plan. I also  
17 disagree with, I believe it was Mr. Adler's  
18 characterizations of a meet and confer yesterday, which was  
19 attended by the Committee. So, I didn't want Your Honor to  
20 think that the Committee was not engaging here.

21 We are. We are focused on getting out of  
22 bankruptcy as soon as possible and we believe that the  
23 motion that will be heard on the 21st fits squarely within  
24 the four corners of the document. Obviously, Your Honor,  
25 that's the issue for you to decide on the 21st and we will

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1 look forward to doing that then.

2 THE COURT: Okay. Mr. Breuder?

3 MR. BREUDER: Paul Breuder, pro se creditor. I  
4 don't want to put words in any of -- anybody else's mouths  
5 about the need for discovery, but I believe it wasn't so  
6 much a concern that the SEC was going to deny of the NewCo  
7 transaction due to the staking operation, but I think it  
8 concerns the timeline of when that communication with the  
9 SEC occurred and there appears to have been discussion as  
10 far back as June or July that the UCC and the Debtors had  
11 communication where the SEC had already pre-denied the NewCo  
12 transaction, but the Debtors and the UCC proceeded to  
13 solicit a plan that included it knowing that it was dead on  
14 arrival.

15 So, I think some of the committees like the Ad Hoc  
16 are tiptoeing around why they want discovery, but I believe  
17 that's the reason why.

18 THE COURT: Well, I'm not -- Mr. Breuder, I'm not  
19 at all persuaded that discovery is appropriate or needed for  
20 the purposes of the hearing on the 21st. We'll see what  
21 happens when we get there. Mr. McCarrick?

22 MR. BREUDER: Understood.

23 MR. McCARRICK: T.J. McCarrick, Kirkland & Ellis,  
24 on behalf of the Debtors, Your Honor. Just on this SEC  
25 discovery issue, as Your Honor noted, there's no live

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1 dispute because the Debtors have agreed to produce, subject  
2 to their relevance objection, our formal communications with  
3 the SEC, but for the reasons Your Honor noted, there's no  
4 dispute among anyone that the SEC did not approve the NewCo  
5 transaction, and candidly, it's not at all clear to us what  
6 -- why that would be relevant to an argument that the  
7 proposed -- or the proposed MiningCo transaction is not  
8 within the four corners of the disclosure statement or the  
9 plan.

10 That's a legal determination that Your Honor can  
11 make. No discovery is appropriate or warranted and  
12 candidly, I think, you know, this sort of show me more  
13 approach to discovery as we go here is just going to cost  
14 the estate more. But we're happy to give the Committee --  
15 or the Ad Hoc the communications.

16 THE COURT: All right, thanks very much, Mr.  
17 McCarrick. Is there anybody else who hasn't spoken yet who  
18 wishes to be heard, other -- Mr. Breuder and Mr. McCarrick,  
19 you can put your hands down. That would be appreciated.  
20 Thank you.

21 MR. KWASTENIET: Your Honor, it's Ross Kwasteniet  
22 from Kirkland, if I may just make a few remarks in response,  
23 first of all, to Mr. Dixon's comments. I agree with Your  
24 Honor. We are completely focused on it. The feedback we got  
25 from the SEC and I guess I'll address Mr. Breuder's comments

1 as well. There seems to be a bit of a budding conspiracy  
2 theory that this was somehow known all along. But I can  
3 just say on its face, like that's absurd that -- to think  
4 that we'd pursue a plan that was dead on arrival.

5 We -- as we've -- we indicated at the confirmation  
6 trial; we filed a pre-clearance application with the SEC in  
7 July. We found out from the SEC; we got a phone call from  
8 them literally hours after Your Honor entered the  
9 confirmation order saying that they would not grant  
10 preclearance with respect to anything other than the mining  
11 assets.

12 We then pivoted very quickly and filed a motion,  
13 you know, within, I think less than two weeks, proposing the  
14 winddown procedures. We're going to be supplementing the  
15 winddown procedures to incorporate the agreement we've  
16 reached with the BRIC, but again, from the Debtor and the  
17 Committee's --

18 THE COURT: And when -- you expect to do that  
19 when?

20 MR. KWASTENIET: By the end of the week, Your  
21 Honor. The agreement was reached, you know, on the  
22 proverbial courthouse steps. So, by the --

23 THE COURT: Let me ask you this. I'm just trying  
24 to -- on my other screen, I've got what was the docket for  
25 Thursday the 21st. My understanding is the hearing on the

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1 substantial contribution claims has been pushed to January.

2 MR. KWASTENIET: That's correct, Your Honor.

3 THE COURT: So, is there anything on the Celsius  
4 docket other than this motion to essentially approve this?

5 MR. KWASTENIET: I don't believe there is, Your  
6 Honor, and if there is, there's nothing more important than  
7 this and we'll -- I would move whatever else there was.

8 THE COURT: All right. And then the question is,  
9 I -- because it's still not clear to me after hearing the  
10 colloquy as to whether this is going to be an evidentiary  
11 hearing, because our rules are that the first hearing is not  
12 evidentiary unless the Court has said it. And, you know,  
13 we're not having a two-week evidentiary hearing starting on  
14 Monday and ending on -- starting on Thursday and ending on  
15 Thursday. What is -- what's the Debtors' position as to  
16 whether evidence is required to be heard?

17 MR. KWASTENIET: Your Honor, we -- in the first  
18 instance, we do not believe that evidence is required. We  
19 think that the winddown procedures are squarely -- fit  
20 squarely within the plan. We believe that while the SEC's  
21 feedback was unfortunate, it was something that we had  
22 contemplated and we designed, you know, a fallback  
23 transaction, if you will, that was a public, take a mining  
24 only public company and administering the rest.

25 We had the concept of winddown procedures because

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1 of course, we couldn't know exactly in advance, you know,  
2 how that would work and what would have to change, but --

3 THE COURT: Let me ask you this. What -- winddown  
4 was clearly one of the contemplated alternatives and what  
5 has -- what, if anything, has changed from what was  
6 described in disclosure statement, as the winddown  
7 transaction? You know, I -- U.S. Bitcoin was identified but  
8 in a somewhat different role than what's proposed now. So,  
9 tell me just briefly, I think -- you know, this is not the  
10 time for the full argument about this hearing, but what is  
11 it that has changed from what was described in the  
12 disclosure statement and the plan?

13 MR. KWASTENIET: Absolutely, Your Honor. So, what  
14 was described in the disclosure statement and the plan was  
15 BRIC was a backup bidder. There was -- we had a backup  
16 agreement with them. That did not include a detailed mining  
17 management agreement, right, so the first thing that changed  
18 what we said in the plan and disclosure statement, was we  
19 would, in the event we're going forward with a mining only  
20 newco, we would identify as part of the windown procedures,  
21 the proposed mining manager and the terms.

22 And we said in that the mining manager might be  
23 U.S. Bitcoin. We couldn't have known exactly who the mining  
24 manager was in advance, because there's the Fahrenheit  
25 Group, and of course, U.S. Bitcoin was part of that group.

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1 And we couldn't really go to them and say, hey, if the rest  
2 of the deal doesn't work, will you still be the mining  
3 manager of the, you know, a mining only newco.

4 They had agreements as between themselves. They  
5 were a consortium. What -- we said in the plan, it might be  
6 U.S. Bitcoin, right, so the first thing we did, Your Honor,  
7 once we got the feedback from the SEC is we engaged in  
8 discussions with Fahrenheit. We gave them the news, of  
9 course. We had been partnering with them and working  
10 towards emergence. And we said, well, unfortunately, we  
11 can't go forward with the whole Fahrenheit deal, but we  
12 would like permission to speak with U.S. Bitcoin about  
13 continuing to serve as the mining manager.

14 And then there was some work to break their  
15 agreement out and separate it from the broader Fahrenheit  
16 deal, which we did, and then that was attached to what we  
17 filed. Your Honor, the story here, you know, the work that  
18 goes into this and from the company's perspective, goes way  
19 back to the auction this spring, right. The main purpose of  
20 the auction this spring was not to, you know, see who could  
21 write, you know, the cheapest proposal for managing the  
22 newco or the mining business or whatever.

23 It was to pick a partner, who we were going to  
24 work with and who was going to, you know, manage the new  
25 business for us, whatever that new business looked like, and

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1 people were pitching different business ideas, et cetera.  
2 We came out of that auction with U.S. Bitcoin as the  
3 preferred manager for the mining business, right, which was  
4 the core -- always the core of the NewCo business, and now  
5 it's the only part of the NewCo business, right, that's  
6 going to go forward. But it -- we had to -- we couldn't  
7 have known in advance for sure that U.S. Bitcoin would be  
8 there and would continue to manage the mining business.

9 THE COURT: With --

10 MR. KWASTENIET: Your Honor --

11 THE COURT: With some trepidation, let me ask a  
12 question that will undoubtedly be asked by me or someone  
13 else at the hearing. Has the Debtor and the Committee  
14 considered as an alternative a proposed sale of the mining  
15 business to convert it to cash or other crypto or something  
16 to distribute currently, rather than having a new publicly  
17 traded mining business?

18 MR. KWASTENIET: Yes, Your Honor, we have. And  
19 earlier in the case, we ran a marketing process and I  
20 believe -- I forget exactly at what hearing. I think that  
21 there was testimony on this, Your Honor, but I -- if you'll  
22 allow me to just represent what I think Centerview and Mr.  
23 Kielty and Mr. Puntus would testify to, the Debtors ran a  
24 marketing process in the first instance, to see what we  
25 could monetize, right? We had various illiquid assets, so

1 we solicited bids.

2 THE COURT: And I do remember that, and the  
3 question -- my question now is, was there a mining only sale  
4 that was considered?

5 MR. KWASTENIET: We solicited bids on the mining  
6 business, Your Honor, and the bids came in at that  
7 effectively equipment liquidation values.

8 THE COURT: All right.

9 MR. KWASTENIET: And so, we determined that we  
10 were going to be leaving incredible -- the going concern  
11 value effectively, of the mining business, we'd be leaving  
12 on the table if we were to sell it. Which is, you know, not  
13 to say we haven't -- that mining that marketing process  
14 happened earlier in the case. There are some on the phone -  
15 - Galaxy, I'm looking in your direction -- who may be  
16 wanting to suggest to Your Honor that we should, you know,  
17 run a new marketing process.

18 Our perspective is we've made sequential decisions  
19 and we're -- we want to want to go forward with the deal  
20 that -- with U.S. Bitcoin who has been the preferred mining  
21 manager since the conclusion of the auction and that we  
22 never told people -- in fact, we told people the opposite.  
23 We said that, you know, based on regulatory feedback, we  
24 will figure out what adjustments need to be made. We will  
25 disclose them in a motion. We will seek Court approval and

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1 we will go forward to confirm and distribute liquid crypto  
2 and make distributions to creditors.

3 So, we have no intention, Your Honor, of reopening  
4 the marketing process. But we did earlier in the case,  
5 before we went down the path of figuring out a newco and who  
6 would manage it, we did a marketing effort and we got bids  
7 that were just liquidation bids for the mining assets.

8 THE COURT: Let me ask this, and it is part of my,  
9 I suppose, underlying my question about whether this is an  
10 evidentiary hearing. Is the Debtor or the Committee going  
11 to offer -- has it offered any evidence, will it offer any  
12 evidence that the proposed changes in the transaction  
13 structure will not result in a decrease in recoveries for  
14 any of the classes of creditors that were projected in --  
15 or, I'll use the word projected. It's not exactly right,  
16 but that were described in the plan and disclosure  
17 statement.

18 MR. KWASTENIET: We are prepared to make that  
19 case, Your Honor, and have submitted declarations, both the  
20 Committee and the company have submitted declarations in  
21 support of the motion to make that case.

22 THE COURT: And it's the position of the Debtor  
23 and the Committee that there's no material negative effect  
24 of these proposed changes. The winddown was always one of  
25 the contemplated solutions. It's just, the particulars of

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1 it that have changed.

2 MR. KWASTENIET: Yes. Yes, Your Honor.

3 THE COURT: So, your position is, and the  
4 Committee's position is, it will not result in any decrease  
5 in recoveries --

6 MR. KWASTENIET: That's --

7 THE COURT: -- that were already projected in the  
8 disclosure statement?

9 MR. KWASTENIET: That's correct, Your Honor, and  
10 in fact, as the scope of the NewCo transaction has been  
11 reduced to be just the mining company, the need for the  
12 capitalization of the NewCo is less --

13 THE COURT: I know your --

14 MR. KWASTENIET: The fees are less.

15 THE COURT: -- distributing more.

16 MR. KWASTENIET: More liquid crypto, but yes, Your  
17 Honor, absolutely. It's not worse. It's neutral to better.  
18 We think better for creditors.

19 THE COURT: All right. Let me ask one other  
20 question and then we can -- is, whether the Debtor and the  
21 Committee have tried to engage with the U.S. Trustee and see  
22 whether you can come to a resolution that would lead the  
23 U.S. Trustee to object and argue that a new disclosure  
24 statement and solicitation would be required.

25 MR. KWASTENIET: I believe that members of my team

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1 and the White & Case team had a call with Ms. Cornell  
2 yesterday where we learned of that position.

3 THE COURT: Keep talking, would you, please?

4 MR. KWASTENIET: Absolutely, Your Honor. I was  
5 not on that call, but I am happy to engage. I can't speak  
6 for Mr. Colodny, but I'm sure he's happy to -- '

7 THE COURT: I'm sure Mr. Colodny's answer is yes.  
8 I won't even -- you know.

9 MR. COLODNY: Right. Your Honor, I was on a call  
10 with Ms. Cornell yesterday and we have spoken with her and  
11 we will continue to discuss with her what we can do to  
12 resolve the issue.

13 THE COURT: Okay. I hope you'll do that, and Mr.  
14 Colodny, I -- just keep talking and see whether there's a  
15 solution that's possible. All right. One more hand raised  
16 -- go ahead, Mr. Colodny.

17 MR. COLODNY: No, you asked about the  
18 consideration and the evidence, Your Honor. The Debtors  
19 submitted a declaration of Robert Compagna which speaks to  
20 them the issue that you squarely put.

21 And then as the consideration under the orderly  
22 windown, there were, I believe, three things to be  
23 distributed: liquid cryptocurrency, what we called illiquid  
24 recovery rights, which was essentially a, you know, an  
25 interest in the illiquid assets which would be monetized;

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1 litigation trust interests or litigation interests, which  
2 were the same under both scenarios; and then NewCo mining  
3 stock, and that is exact -- or mining stock. And that is  
4 exactly what's to be distributed under what the MiningCo  
5 motion, which is in essence the orderly winddown.

6 THE COURT: All right, thank very much. There's  
7 one more hand raised. Briefly, Mr. Iovine.

8 MR. IOVINE: Yes, Jason Iovine, pro se. I just  
9 wanted to point out that that marketing campaign was done  
10 when the market was distressed and pushed very negative.  
11 The price of bitcoin has almost doubled since the petition  
12 date and it could have a different outcome if another  
13 marketing campaign was done.

14 THE COURT: It could have a big outcome in the  
15 value -- it could have --

16 MR. IOVINE: Just wanted to point that out.

17 THE COURT: -- a big -- in the value of NewCo, you  
18 know, mining bitcoin looks much more profitable today than  
19 it did at the start of the case, so -- but I take your  
20 point. But you don't rewind the case every time there's a  
21 change in a market price of a commodity or something. So,  
22 all right. We'll -- I guess the discovery issues, which was  
23 the reason for setting the conference today, have been  
24 resolved, so we are adjourned.

25 MR. ADLER: Thank you, Your Honor.

1 MR. KWASTENIET: Thank you, Your Honor.

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3 (Whereupon these proceedings were concluded at  
4 3:33 PM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

7  
8 Sonya Ledanski Hyde

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25 Date: December 20, 2023

[&amp; - attorneys]

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